IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE SIDE
Writ Petition No.1605 of 1999

C.G.Tewari Petitioner
Vs.
Union of India & ors. Respondents

CORAM: B.H.MARLAPALLE & NARESH H.PATIL,JJ.

October 09, 2006.

ORAL JUDGMENT (PER B.H.MARLAPALLE,J.)

1. Being aggrieved by the judgment and order dated 19/8/1998 passed by the Central Administrative Tribunal allowing partly the Original Application Nos.652, 653 and 654 of 1997, this petition has been filed by the original respondent no.9. The petitioner, before he approached this Court, had filed review applications which also came to be rejected summarily by the Central Administrative Tribunal on 9/10/1998. The directions given by the CAT in the impugned common judgment read as under:

> "(i) Respondents are directed to hold Review D.P.C. for the vacancies of the year 1991-92 by taking into consideration the zone of consideration by considering all the 130 officers who were in service at that time

including the officers who have subsequently retired prior to D.P.C. meeting, by excluding the names of Respondents 3 to 18 from the zone of consideration for that year and then after making the necessary gradings on the basis of records, the Review D.P.C. shall select the names of officers who are to be promoted for the vacancies of 1991-92.

(ii) If, however, on the basis of the grading the applicants do not get promotion for the vacancies of 1991-92 then the applicants should be considered for promotion in the vacancies for the subsequent years. For every such Review D.P.C. the names of such eligible officers shall be selected for the zone of consideration only from the officers who were in service for the relevant vacancy year including those officers who have subsequently retired and then on the basis of grading select the officers for promotion.

(iii) Similarly Respondents 3 to 18 be considered by the Review D.P.C. for the vacancies of 1992-93 or 1993-94 depending upon

their coming within the zone of consideration and depending upon the number of vacancies and the grading, they may be promoted.

(iv) After the exercise of review D.P.C. are over as mentioned above and formal promotion orders are issued for the vacancies of the relevant years, then a seniority list should be prepared of all the promoted officers. The officers promoted in the earlier years will certainly rank senior to the officers who are promoted in the subsequent years. As far as officers promoted in one year their rank position should be arranged as per their grading given by the D.P.C.

(v) We make it clear that none of the applicants or Respondents 3 to 18 or any other promoted officer should not be demoted by virtue of this exercise of Review D.P.C. If by chance by virtue of Review D.P.C. some officers who are yet to be promoted become entitled to be promoted then they can be promoted in the future vacancies, but of

course giving them seniority as per D.P.C. grading and year of vacancy.

(vi) For the purpose of further promotions, till such seniority list is prepared after holding review D.P.C. as mentioned in this order, the official respondents can take up promotion to senior administrative grade on the basis of existing seniority list and in case any of the Respondent No.3 to 18 gets selected in the next promotion, the same may be made purely on ad hoc basis to be subject to the final seniority list to be prepared as per the direction in this order and ad hoc promotion to be reviewed after finalising the said seniority list. In the order of promotion itself it should be mentioned that in case any of the respondents Nos.3 to 18 are selected, their promotion would be ad hoc and will be reviewed after the seniority list is finalised as per the judgment.

(vii) We hereby direct the official respondents to complete the exercise of review D.P.Cs. and issuing fresh order of promotion

and preparation of fresh seniority list on that basis as early as possible and preferably within a period of four months from the date of receipt of a copy of this order."

2. The dispute before the CAT was very limited and it arose from the DPC of 1991-92 on the basis of which initial promotion order dated 8/7/1996 was issued for the post of Junior Administrative Grade of Indian Telecom Services (Group-A) on temporary and purely ad-hoc basis to officiate until further orders with effect from 4/7/1996. This promotion list to JAG of ITS (Group-A) (pay scale Rs.3700-5000) was suo motu amended on 24/9/1996 and both these orders came to be challenged by the present respondent nos.3 to 5 contending therein that though the original respondent nos.3 to 18 were junior to them, they were in fact shown senior and that too contrary to the law laid down in the case of N.S.K. Nayar & ors. v. Union of India & ors. **[1992 Supp (2) SCC 508]**. The Tribunal observed that the impugned promotion orders were on the basis of seniority cum merit and it was not a case of promotion by selection method and if that be so the seniority in the future grade was required to be maintained. It noted after hearing

all the parties that the respondent nos.3 to 18 could not have come within the zone of consideration if the choice was limited to 130 officers to fill in 63 vacancies for the year 1991-92. Hence the Tribunal directed to hold review D.P.C. for consideration of promotion for the year 1991 to fill in 63 vacancies from amongst 130 officers on the basis of seniority.

3. By following the law laid down in Nayar's case (Supra) the seniority list was drawn and the present petitioner is shown at Sr.No.339 (Seniority list Exhibit "K" before the Tribunal) whereas the present respondent no.3 was shown at sr.no.197, respondent no.4 at sr.no. 217 and respondent no.5 at sr.no.202. The officers upto sr.no.188 of the seniority list at Exhibit "K" were already promoted to the Junior Administrative Grade in the year 1990-91, 130 officers starting from sr.no.189 and ending at sr.no.318 could, therefore, be considered for the next year i.e. 1991-92. The present petitioner was not figuring in the serial numbers from 189 to 318 in the seniority list at Exhibit "K" and as noted earlier, he was listed at sr.no.339 and same was the case in respect of respondent nos.3 to 18 before the Tribunal. The petitioner by the review application

sought to reopen the promotions granted in the year 1989-90 and 1990-91 by his review petition before the Tribunal which was not the subject matter in the original applications already decided by the impugned common judgment. The Tribunal, therefore, rejected the said application.

4. In this petition again the petitioner prays for the review of the DPC for the years 1989-90, 1990-91 and 1991-92. When the issue of review for the DPC for the years 1989-90 and 1990-91 was not a subject matter covered by the Original Applications decided by the Tribunal by the impugned common judgment, the said issue cannot be decided by us in this petition now and so far as the issue regarding the DPC for the year 1991-92 is concerned, the officers upto sr.no.318 in the seniority list at Exhibit "K" could be considered for 63 vacancies [2x63+4] and, therefore, the Tribunal has rightly considered all the relevant issues and given directions to call for a review DPC for the year 1991-92.

5. The view taken by the Tribunal can neither be called as perverse nor it suffers from the errors

apparent on the face of record and hence this petition must fail. The same is hereby dismissed.

Rule discharged with no order costs.

(NARESH H. PATIL,J) (B.H.MARLAPALLE,J.)